Supreme Court, U. S.
FILED
JUN 6 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term 1979

No. 79-1551

SIX NATIONS CONFEDERACY,
Petitioner,

v.

CECIL ANDRUS, Secretary of the Interior, et al.,
Respondents.

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

1. In its brief in opposition to certiorari, the government misleads the Court about the central issue of this case. The government suggests that the disputed Indian Claims Commission case had admittedly been properly brought by descendants of the Six Nations Confederacy. (Brief For The Federal Respondents In Opposition, p. 2, n.1) In fact, the extensive evidentiary hearing held before the District Court establishes just the opposite. The witnesses for petitioner testified that the claimants who brought the Six Nations claim were not descendants of or successors in interest to the lawful, political authority of the Six Nations. The uncontroverted testimony shows that both the individual claimants and the "tribal entity" claimants were descendants of the Six Nations only in the sense that they may have been able to trace their personal ancestry, their blood relationship, to the member nations of the Six Nations Confederacy. Genetic relationship is not, of course, sufficient to confer lawful authority on those individual and group claimants to assert and dispose of legal claims of the Six Nations Confederacy.

Petitioner's first witness, a Dehora or Faith Keeper and authorized spokesperson for the Six Nations Confederacy, first briefly described the history, organization and governing procedures of the Six Nations Confederacy. (Tr.* 24-29) He testified that the claimants in the disputed Indian Claims Commission case acted without authority of the Six Nations Confederacy:

> A....And our response [upon learning of the Six Nations claims case which had been brought in the name of the Six Nations Confederacy in the Indian Claims Commission], of course, was to look at the petitioners, who was it that was involved in this, and the principal was a man by the name of Williams of the Seneca nation, the elective Seneca nation that we talked about, who does not have the authority to speak for the Six Nations to begin with and who had separated themselves since 1848, very specifically from our processes and now beginning, as we can in this document, was speaking on behalf of the Six Nations, so he was illegal.... (Tr. 46-47)
>
> . . .
>
> Q. Joa Quis On, you have testified that the Oneidas of Wisconsin and I believe the Seneca, Cayuga, the people of Oklahoma and certain others were descendants of the Six Nations. Were

*Transcript references are to the hearing of May 26, 1977 before the District Court. This transcript is reproduced in the Joint Appendix below (pp. 80-185).

> those people that you so identified, were those people members of the Six Nations?
>
> A. Were they or are they?
>
> Q. Are they?
>
> A. No, they are not.
>
> Q. Well, were they in the period 1946 to 1956?
>
> A. No, they were not.
>
> Q. Did they have any legal relationship to your knowledge to the Six Nations Confederacy?
>
> A. No, they did not.... (Tr. 57-58).

The same witness gave additional testimony on this point. (Tr. 30-32)

Petitioner's second witness, a clan mother of the Onondaga Nation and authorized spokesperson for the Six Nations Confederacy, presented similar testimony:

> Q. To your knowledge, were the persons [named as claimants in the disputed Indian Claims Commission case]...members of the Six Nations Confederacy?
>
> A. No. They had alienated themselves from the Six Nations.
>
> . . .
>
> Q. At any time to your knowledge, did the Six Nations ever authorize

any of those persons to file a claim on its behalf?

A. No. (Tr. 66-67)

Her testimony also confirmed that the "tribal entity" claimants had not been authorized to file a claim on behalf of the Six Nations Confederacy. (Tr. 68,69)

Petitioner's third witness, a sub-chief for the bear clan of the Mohawk Nation and authorized spokesperson for the Six Nations, testified that under the law of the Six Nations only the Grand Council of the Six Nations Confederacy is authorized to act on matters concerning Six Nations land rights. (Tr. 74) He then corroborated the preceding testimony about the lack of authority of the individuals and groups which brought the disputed claims case in the Indian Claims Commission. (Tr. 76-77)

None of this extensive testimony by knowledgeable and authoritative representatives of the Six Nations Confederacy was contradicted. The government called no rebuttal witnesses. The record below is devoid of any evidence that the individuals and groups who brought the disputed claims case had any legal authority to take such action on behalf of the Six Nations Confederacy.

Contrary to the government's suggestion, there is the strongest likelihood that petitioner

will prevail on the merits should certiorari be granted, federal court jurisdiction established, and trial of the substantive issues directed by this Court.

2. Petitioner has argued that the Indian Claims Commission Act is unconstitutional on its face insofar as it permits the arbitrary disposition of Six Nations legal rights by groups and individuals who have acted without notice to or authority of the Six Nations government. In addition, petitioner asserts in its amended complaint of May, 1977, that the Indian Claims Commission has applied the Act in an unconstitutional manner and has also violated several provisions of the Act. (Amended Complaint For Declaratory And Injunctive Relief, paras. 50-52) Since both the substance and application of the Act are at issue in this action, the government is incorrect in its statement that "There is no suggestion that the Commission violated the Act in treating the plaintiffs before it as proper applicants." (Brief For The Federal Respondents In Opposition, p.5)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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June, 1980